

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 272 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

ABHISHEK CORPORATION

Appearance:

MR MANISH R BHATT for Petitioner

MR SOPARKAR for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

[MR.JUSTICE P.B.MAJMUDAR

Date of decision: 25/10/1999

ORAL JUDGEMENT(Per:Patel-J)

1. Being aggrieved by the order passed by the
Income-tax Appellate Tribunal, Ahmedabad Bench C,
Ahmedabad (hereinafter referred to as the Tribunal), in
R.A.No. 869/Ahd/1997 the Commissioner of Income-tax,
Surat (CIT for short) has filed this application before

this Court under section 256(2) of the Income-tax Act 1961 (hereinafter referred to as the Act) for referring the following questions of law:

"1 Whether on facts and in the circumstances

of the case, the I.T.A.T. was justified in law in admitting a new plea contrary to the facts on record that the net profit in respect of the supervision charges should be linked to the receipts of booking of flats to the tune of Rs. 2.63 crores contrary to the provisions of Rule 29 read with rule 10 of the Appellate Tribunal Rules and to base its finding thereon ?

2. Whether on the facts and circumstances of

the case the ITAT having held that assessee has received unaccounted receipts was justified in law in holding that the assessing officer has to discharge onus in respect of on money by showing that assessee has invested Rs. 1,58,59,400/- out of such receipts whereas claim of assessee for extra expenditure was found to be incorrect ?

2. So far as question no.1 is concerned the Tribunal in para 8 has recorded as under:

"As regards question no.1 raised by the Revenue,

it is seen that the question talks about acceptance of new plea contrary to provisions of Rule 29 read with Rule 10 of the Appellate Tribunal Rules. However, neither any fact contrary to record was stated by the assessee nor it has been noted by the Tribunal in its order and as such Rule 10 is not applicable. Similarly no additional evidence was produced by the assessee. As such Rule 29 is also not applicable because a new plea cannot be equated with the new evidence"

3. So far as question no.2 is concerned it may be stated that the same has been raised on the premise that the claim for extra expenditure having been incurred by the assessee for earning on - money was found to be incorrect. The Tribunal has expressed the view that this premises itself is incorrect because the Department has failed to prove that the claim of the assessee regarding extra expenditure as incorrect. On the other hand, as a result of search by the Department, no unaccounted assets/investments exceeding Rs 30 lacs were found by the

Department. Before us it was submitted that one Uttamchand Jain who purchased two flats entered into an agreement. Said document was signed by Uttamchand Jain, M.D.Patel and Udai Tejani. It seems that on the top of the page "465 per sq.ft" was mentioned and the sale price of each flat has been calculated accordingly for arriving at a conclusion. The agreement does not refer to the said price. Mr. Naik submitted that statement of architect was recorded. Uttamchand Jain has come out with the version that no premium was paid. Except the paper found from Madhavji nothing is placed on record to draw an inference against the assessee. No statement of other flat owner is recorded.

4. Mr. Soparkar for the respondent assessee has relied upon a decision of the Division Bench of this Court (Coram: R.Balia & A.R.Dave.JJ) rendered in Income-tax Application No. 53 of 1999 on 20.4.1999 in the case of Commissioner of Income-tax vs. President Industries. In this case, the Division Bench has observed as under:

"..It cannot be matter of an argument that the amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represented the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that investment by way of incurring cost in acquiring goods which have been sold have been made by the assessee and that has also not been disclosed. In the absence of such finding of fact the question whether entire sum of undisclosed sale proceeds can be treated income of the relevant assessment year answers by itself in the negative"

5. The assessee, a partnership firm comprising of Udai Tejani and Arvind Patel having equal share undertook the supervision work of two co-operative societies and also of booking the flats. One Madhavji Patel, Architect and Builder of the said two co-operative societies was subjected to search and seizure proceedings u/s 132(1) of the Act. From the possession of the said Madhavji Patel a paper was seized from which an inference was drawn that one Uttamchand Jain purchased two flats at the rate of Rs. 455/- per sq.ft. The document was in fact was suggesting the price at Rs. 265/- per sq.ft. Assessing

Officer on the basis of this piece of evidence arrived at a conclusion of addition of income of Rs. 1,88,59,400/-. The paper relied upon was not found from the possession of the assessee or its partners. Extra work was to be carried out by Madhavji Patel for which amount was charged. Uttamchand Jain denied having paid any premium in respect of the flats purchased. If a document is found from the possession of a person, section 132(AA) can be invoked.

In response to notice assessee declared undisclosed income of Rs.. 30 lacs. In para 6 and concluding para of the judgment of the Tribunal it is pointed out that considering the fact that the assessee was entitled to supervision charges taking into consideration depreciation, salary etc. profit rate will come to 1.31%. Considering the rate at Rs. 265/- per sq.ft. total receipt would be 2.65 crores on which the profit earned was Rs. 3,43,672/-(after deducting all expenses). The profit at the rate of 1.31% was not disputed by the Revenue at the time of hearing as observed by the Tribunal. One has to bear in mind that the assessee was engaged as a supervisor. Investment in land, investment in construction work which would be of huge amount is not shown to have made by the assessee. The Tribunal opined that the undisclosed income of Rs. 30 lacs declared by assessee is not less than the net profit calculated at 1.31%. The Tribunal also considered the fact that no material on record has been placed to indicate the investment of huge amount by assessee. Considering all these facts, the Tribunal has rendered its decision on appreciation of material placed on record.

6. Thus the Tribunal on appreciation of evidence has found that no referable question of law has arisen. After going through the decision rendered by the Tribunal we are also of the view no referable question of law arises in this matter. Hence the application is rejected. Rule discharged. No order as to costs.